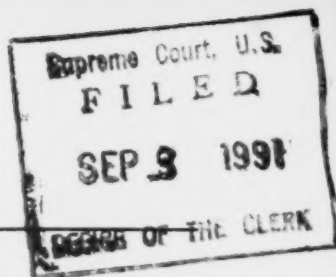


1-409



No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

FELICIANO NAVARRO,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
APPELLATE COURT OF THE STATE OF
ILLINOIS, FIRST JUDICIAL DISTRICT

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(1a) QUESTIONS PRESENTED

1. Whether this Court should reverse the Illinois reviewing court's reversal¹ of the trial court's order allowing petitioner's Motion to Quash Arrest and Suppress Evidence obtained in violation of petitioner's constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution, because

¹ The Order sought to be reviewed, is that of the Appellate Court of Illinois, First Judicial District. We feel constrained to point out that it appears this Court is uniformly disinclined to exercise discretionary review via certiorari of judgments of the intermediate appellate courts of the States. Considering the rarity of the highest court of review of Illinois (i.e., the Supreme Court of Illinois) granting discretionary leave to appeal, a disproportionate number of litigants--at least in Illinois--are left with no recourse, as a practical matter, from the intermediate courts of review. We urge Your Honors to realize that for almost all Illinois litigants, the various Appellate Courts of Illinois, are, indeed, the "courts of last resort" at the State level, and therefore to keep open the collective judicial mind to the merits of the instant Petition and to the need for this Court to speak on the issues raised.

the trial court's finding--that the mystery informer's anonymous tip did not furnish probable cause for petitioner's warrantless arrest --correctly applied constitutional law as mandated by this Court, where:

(a) the Appellate Court's undue reliance on the reputation of the nature of the premises² conflicts with

(i) constitutional principles as enunciated in Ybarra v. Illinois, 444 U.S. 85 (1979), and/or

(ii) decisions from Courts

² The anonymous tip included that there was to be a drug pickup from the Milshire Hotel, as to which the officer testified: "The Milshire Hotel has got itself a reputation for housing junkies, dope dealers, various different types of criminals in the hotel, you know." (R. 29) [Here and hereafter: "R." refers to the pages of the Report of Proceedings contained within the Record on Appeal in the Appellate Court of Illinois, No. 1-89-2249. See also fn. 3, p. 5, infra.]

of Appeal, such as United States v. Branch, 545 F.2d 177 (D.C. Cir. 1987); United States v. Miller, 546 F.2d 251 (8 Cir. 1976); United States v. Clay, 640 F.2d 157 (8 Cir. 1981), that a person's connection to premises is insufficient to furnish probable cause as to the person, even where there is probable cause to search the premises; and

(b) the only facts from the mystery informer's anonymous tip that were corroborated, were wholly innocent.

(1b) PARTIES INVOLVED

Petitioner, Feliciano Navarro, was the Defendant in the Circuit Court of Cook County, Information No. 88-10301; Appellee in the Appellate Court of Illinois, First Judicial District, Second Division, No. 1-89-2249; Petitioner in the Supreme Court of Illinois, No. 71643.

Respondent, People of the State of Illinois, was the Plaintiff in the Circuit Court; Appellant in the Appellate Court; and Respondent in the Supreme Court of Illinois.

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This Court should scrutinize the unwarranted reliance of the Illinois reviewing court on the reputation of the nature of the premises, as a factor in the probable cause determination, which reliance conflicts with (i) constitutional principles enunciated in Ybarra v. Illinois, 444 U.S. 85 (1979), and (ii) decisions from Courts of Appeals, such as United States v. Branch, 545 F.2d 177 (D.C. Cir. 1987), United States v. Miller, 546 F.2d 251 (8 Cir. 1976), and United States v. Clay, 640 F.2d 157 (8 Cir. (1981), that a person's connection to premises is insufficient to furnish probable cause as to the person,

even where there is probable cause to search the premises--especially where the only facts from the mystery informer's anonymous tip that were corroborated, were wholly innocent. The Circuit Court correctly applied constitutional principles in finding no probable cause and suppressing the evidence; and this Court should reverse the Appellate Court's reversal and reinstate the Circuit Court's judgment.

The Appellate Court's unjustifiable acceptance of the mystery informant's tip plus reputation of the premises as providing probable cause in this case--considering the unsatisfactory nature of the supposedly "corroborative" information--portends a dangerous erosion of the constitutional concept of personal liberty as guaranteed by the Fourth and Fourteenth Amendments, inviolate except upon probable cause.

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Appendices:

A. [Unpublished] Order of the Appellate Court of Illinois, First Judicial District, Second Division, No. 1-89-2249, dated December 31, 1990. App. 1

B. Order of Illinois Appellate Court, dated March 19, 1991, denying Petition for Rehearing (No. 1-89-2249) App. 24

C. Order of Illinois Supreme Court denying Petition for Leave to Appeal, No. 71643, dated June 5, 1991 App. 25

D. Excerpt from Report of Proceedings in Circuit Court, R. 75. App. 26

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

FELICIANO NAVARRO,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
APPELLATE COURT OF THE STATE OF
ILLINOIS, FIRST JUDICIAL DISTRICT

Petitioner, Feliciano Navarro,
(hereafter, defendant), prays that a writ
of certiorari issue to review the judgment
of the Appellate Court of Illinois, First
Judicial District, Second Division, on
appeal by the State, reversing and
remanding the order of the Circuit Court
of Cook County, Illinois, granting
defendant's motion to quash arrest and
suppress evidence, leave to appeal having
been denied by the Supreme Court of
Illinois.

1(d) Judgment and Orders Below

The [unpublished] Order of the Appellate Court of Illinois, First Judicial District, Second Division, No. 1-89-2249, dated December 31, 1990, (on appeal by the State), reversing the order of the Circuit Court of Cook County, Criminal Division--which had granted defendant's motion to quash arrest and suppress evidence--and remanding for further proceedings upon the Information charging defendant with possession of a controlled substance with intent to deliver, Info. 88-10301, is attached as Appendix A to this Petition. (App. 1-23) It is not reported.

The Order of the said Appellate Court, dated March 19, 1991, denying defendant's Petition for Rehearing, is attached as App. B. (App. 24)

The Order of the Supreme Court of Illinois, No. 71643, dated June 5, 1991,

denying defendant's Petition for Leave to Appeal, is attached as App. C. (App. 25)

App. D is an excerpt from the Report of Proceedings in the Circuit Court, R. 75. (App. 26-27)

(1e) Jurisdictional Statement

On December 31, 1990, the Appellate Court of Illinois, First Judicial District, Second Division, filed its Order reversing and remanding the order of the Circuit Court of Cook County, Illinois.

(App. A) Defendant's Petition for Rehearing, timely filed, was denied on March 19, 1991. (App. B) Defendant's Petition for Leave to Appeal, timely filed, was denied by the Supreme Court of Illinois on June 5, 1991. (App. C)

This Petition for Certiorari is timely filed within 90 days thereafter. Jurisdiction is invoked under 28 U.S.C. 1257(a) and Rules 10.1, 12.1 and 13.1 of this Court.

1(f) Constitutional Provisions

Defendant maintains that his rights under the following provisions of the United States Constitution were violated by his arrest in this case, and by the decision of the Appellate Court of Illinois, on appeal by the State, reversing and remanding the Circuit Court's order granting his motion to quash arrest and suppress evidence (based on its proper finding of "no probable cause"):

Amendment IV

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment XIV

"Sec. 1. ...[N]or shall any state deprive any person of ... liberty or property, without due process of law...."

1(g) STATEMENT OF THE CASE

Defendant was charged in Info. No. 88-10301 with possession of a controlled substance with intent to deliver [Ill.Rev.Stat. 1985, ch. 56-1/2, sec. 1401(a)(2)]. (CLR 86d)³ His Motion to quash arrest and/or suppress evidence (CLR 92), alleging he was arrested without a warrant and without probable cause, was allowed by the Circuit Court, (R. 75), after evidentiary hearing. [R. 75 is set out as App. D, App. 26-27.] The State appealed pursuant to Illinois Supreme Court Rule 604(a)(1), Ill.Rev.Stat. ch. 110A, sec. 604(a)(1). The Appellate Court, finding probable cause, reversed and remanded for further proceedings upon the Information. (App. A)

³ Here and hereafter: CLR refers to the Common-Law Record in the Appellate Court, No. 1-89-2249, and R. to the Report of Proceedings in the Circuit Court of Cook County, included within the Record on Appeal in the Appellate Court.

Statement of Facts

The following facts were adduced at the hearing on defendant's Motion to Quash Arrest and Suppress Evidence (CLR 92), on the basis of which the Circuit Court found there was no probable cause, (R. 75; App. D, App. 26-27), and the Appellate Court, finding probable cause, reversed. (App. A)

The State has conceded throughout the proceedings--in the Circuit Court and in the Appellate Court--that the arrest took place when the vehicle was stopped. The Appellate Court expressly accepted the court's finding (R. 75) that the arrest occurred when the car was stopped. (App. 9-10)

Chicago Police Officer Palasz received a telephone call from an anonymous⁴ "female white, female

⁴ He did not know who the caller was, (R. 46); did not know her name, which she refused to give. (R. 30, 42, 46) To his knowledge, she never gave him [or any (fn. continued, following page)]

Hispanic," at approximately 11:15 p.m. on February 11, 1988. (R. 30, 46) She told him she had "overheard a conversation" regarding a large drug pickup; that two men were leaving the Palm Gardens Lounge on Armitage, and going to the Milshire Hotel, 2525 N. Milwaukee, to make a large drug pickup. (R. 22, 29-31, 41, 43, 45-46)⁵ She said the men would be in a "dark-colored Datsun," and gave a license number, which the officer could not recall. (R. 31-32)⁶

other police officer] information on any other case(s). (R. 46)

⁵ While she did not say where she overheard the conversation, or that she was at the Palm Gardens Lounge, (R. 31, 46), he assumed she was at the Palm Gardens Lounge. (R. 46)

⁶ Upon refreshing his recollection with his police report, the officer gave testimony concerning the license of the car matching the license the caller had given him, which led the Appellate Court to conclude that the officer "verified" or "corroborated" the plate number given to him with that of the vehicle which he observed. (App. A, App. 15-16)

The caller described the two men as male white Hispanics. (R. 43) She did not give any further description for either person. (R. 43-45, 48) She did not say the men were armed. (R. 45)

Palasz left for the Milshire Hotel-- which he described as: "The Milshire Hotel has got itself a reputation for housing junkies, dope dealers, various different types of criminals in the hotel, you know." (R. 29)--arriving at about 11:30 p.m., and set up surveillance in a police car about a block from the Hotel, at Sacramento and Milwaukee. (R. 28, 33, 34, 47, 51) He did not dispatch any police to the Palm Gardens Lounge. (R. 45)

About 15 minutes later, a dark-colored (gray) Datsun with two occupants pulled up in front of the Milshire Hotel and stopped in the middle of the street. (R. 21, 34, 35) Palasz does not know if this car proceeded from the Palm Gardens

Lounge. (R. 45-46) Defendant, the passenger, left the car and went into the Milshire Hotel. (R. 20, 35)

While the passenger was out of the car, the vehicle proceeded to circle the block three times.⁷ On the third time, the car pulled over across the street from the hotel; defendant left the lobby of the hotel and got into the passenger side of the car. (R. 20, 35-37) At that point, Palasz turned on his emergency lights, pulled his car in front of the Datsun, and stopped it as it started to pull away. (R. 38, 48)

Palasz had not seen a drug pickup, (R. 43); had not seen any objects in defendant's hands when he entered or left the hotel, (R. 43, 48); had not seen any objects in the driver's hands, (R. 43);

⁷ There is no evidence as to whether or not any parking spaces were available on the street, when the driver was circling the block.

did not know what, if anything, defendant did in the hotel, (R. 44); did not know if defendant saw anyone in the hotel, (R. 43); did not know if defendant went into any room in the hotel. (R. 44) Defendant was gone from the car for about 7 or 8 minutes. (R. 52)

Palasz did not have a search warrant or arrest warrant, (R. 19); he did not see the driver or passenger (defendant) commit any crime(s). (R. 19-45) No traffic violations were committed. (R. 19, 45)

After stopping the Datsun, Palasz left his vehicle and walked over to the passenger side of the Datsun, where he observed, through the windshield, defendant stuffing a large brown paper bag between the console and the passenger seat. (R. 38, 48-49)

Palasz ordered defendant out of the car, (R. 38, 48-49), while his partner came over and removed the driver. (R. 39)

The partner stayed with the driver and defendant while Palasz seized the brown paper bag, at which time Palasz did not know what was in the bag. (R. 39, 49) Upon opening the bag, Palasz found that it contained white powder [later weighed as 43.65 gms.] which he believed to be cocaine. (R. 39-40)

Thereafter, Palasz obtained admissions from defendant, 2.01 gms. cocaine in his right pocket, and consent to search, resulting in the seizure of additional cocaine [24.43 gms] from defendant's residence. (R. 18, 39-40, 49-53)

The Circuit Court granted defendant's motion to quash and suppress, (Motion, CLR 92; granted, R. 75, App. D), and the State appealed. The Appellate Court reversed and remanded. (App. A)

(1h) Raising the Federal Question

In his Motion to Quash and Suppress filed in the Circuit Court, defendant alleged that he was arrested without a warrant and without probable cause, and that evidence was obtained thereby, in violation of his federally guaranteed constitutional rights under the Fourth and Fourteenth Amendments. (CLR 92) The Circuit Court held that he was arrested when police stopped the car in which he was riding, and that this arrest was without probable cause. (R. 75) (App. D, App. 26-27)

On appeal by the State, defendant urged in his Appellee's Brief (hereafter, Def. Br.), that the trial court's order granting defendant's motion to quash and suppress should be affirmed, arguing, inter alia, "the standing maxim of Fourth Amendment law: warrantless searches are per se unreasonable," (Def. Br. p. 10),

citing, inter alia, Illinois v. Gates, 462 U.S. 213 (1983). Citing Brown v. Texas, 443 U.S. 47 (1979), and Dunaway v. New York, 442 U.S. 200 (1979), defendant argued that "Ordering defendant from the vehicle, restraining him, and searching the vehicle and the bag -- constituted a seizure of defendant's person, and a full-blown search of the vehicle and the bag, which requires the existence of probable cause." (Def. Br., id., p. 10) He argued there was no probable cause at bar. (Id., pp. 9-13)

Defendant generally argued (as appellee in the Appellate Court) that there was no significant corroboration of any details of the anonymous informant's tip, (id., pp. 9-12), and pointed out that, unlike the decisions relied on by the State involving police informers with

established prior credibility,⁸ this case involves an anonymous citizen tipster, such that the principles of Gates, supra, and Alabama v. White, 496 U.S. ___, 110 L.Ed.2d 301 (1990), apply. (Def. Br. p. 12)

After the Appellate Court issued its Order, wherein great reliance was placed upon the alleged reputation of the character of the premises, (App. 3, 17-18, 20-21),⁹ as a factor in the probable cause

⁸ People v. Beck, 167 Ill.App.3d 412, 521 N.E.2d 269 (5 Dist. 1988) (St. Br. pp. 9-10); People v. Tisler, 103 Ill.2d 226, 469 N.E.2d 147 (1984) (St. Br. p. 10); Spinelli v. United States, 393 U.S. 410 (1969) (St. Br. p. 12); Draper v. United States, 358 U.S. 307 (1959) (St. Br. pp. 7-8).

⁹ "In addition to the corroborated tip, Palasz also knew that the Milshire Hotel was known as a place of drug sales and users." (App. 17-18) "However, in addition to verifying most of the details provided by the informant herein . . . , officer Palasz knew the reputation of the hotel where the drug pick-up was to occur." (App. 20-21) Earlier, the Appellate Court had stated "that the [Milshire] hotel has a reputation for (fn. continued, following page)

determination, defendant in his Petition for Leave to Appeal (hereafter, PLA) to the Illinois Supreme Court, raised the issue as raised in the instant Petition for Certiorari, that such reliance on the supposed character-reputation of the premises conflicts with the Court's pronouncement in Ybarra v. Illinois, 444 U.S. 85 (1979), and with decisions from federal Courts of Appeals, such as United States v. Branch, 545 F.2d 177 (D.C. Cir. 1987), United States v. Miller, 546 F.2d 251 (8 Cir. 1976), and United States v. Clay, 640 F.2d 157 (8 Cir. 1981), that a person's connection to premises is insufficient to furnish probable cause as to the person, even where there is

housing drug dealers and users." (App. 3)

The officer's actual testimony as to the nature of the premises was: "The Milshire Hotel has got itself a reputation for housing junkies, dope dealers, various different types of criminals in the hotel, you know." (R. 29)

probable cause to search the premises-- especially where the only facts from the mystery informer's anonymous tip that were corroborated, were wholly innocent. (PLA, pp. 1-2, 9-10) Defendant expressly argued in his PLA that "reliance on such [building reputation] evidence violates basic Fourth Amendment principles, that probable cause must inhere to the individual to be arrested, not merely to a place where he is found ..." (PLA p. 9) "We submit that such principles, epitomized in such decisions as Ybarra . . . prohibit the use of a building's "reputation" as an ingredient in the probable cause determination; for there is no rational reason for attributing the reputation of a building, to any given person going there." (PLA pp. 9-10) Defendant further argued: in his PLA, "see also United States v. Branch, 545 F.2d 177 (D.C. Cir. 1987), United States v. Miller,

546 F.2d 251 (8 Cir. 1976), and United States v. Clay, 640 F.2d 157 (8 Cir. 1981)--holding it was illegal to search all persons arriving at an apartment during a lawful search. The mere connection of the person to the premises, is insufficient; the character of the premises does not carry over automatically to persons arriving or leaving." (PLA p. 10) Defendant went on to argue that "From the Appellate Court's analysis, it is evident that the Court unduly relied on the reputation of the Hotel as a crucial ingredient in the probable cause determination, expressly using this factor to distinguish ... decisions in defendant's favor." (PLA p. 11)

Defendant further argued that nothing in the anonymous informant's tip, even as corroborated, was sufficient to lead anyone to believe that the caller was privy to any reliable information about

illegal activities of those in the car.

(PLA p. 7)

Despite these arguments in his
Petition for Leave to Appeal, the Supreme
Court of Illinois denied leave to appeal,
without opinion. (App. C; see fn. 1, p. i,
supra.)

REASONS FOR GRANTING CERTIORARI

This Court should scrutinize the unwarranted reliance by the Illinois reviewing court on the reputation of the nature of the premises, as a factor in the probable cause determination, which reliance conflicts with (i) constitutional principles enunciated in Ybarra v. Illinois, 444 U.S. 85 (1979), and (ii) decisions from Courts of Appeals, such as United States v. Branch, 545 F.2d 177 (D.C. Cir. 1987), United States v. Miller, 546 F.2d 251 (8 Cir. 1976), and United States v. Clay, 640 F.2d 157 (8 Cir. 1981), that a person's connection to premises is insufficient to furnish probable cause as to the person, even where there is probable cause to search the premises--especially where the only facts from the mystery informer's anonymous tip that were corroborated, were wholly innocent. The Circuit Court

correctly applied constitutional principles in finding no probable cause and suppressing the evidence; and this Court should reverse the Appellate Court's reversal and reinstate the Circuit Court's judgment.

The Appellate Court's unjustifiable acceptance of the mystery informant's tip plus reputation of the premises as providing probable cause in this case-- considering the unsatisfactory nature of the supposedly "corroborative" information --portends a dangerous erosion of the constitutional concept of personal liberty as guaranteed by the Fourth and Fourteenth Amendments, inviolate except upon probable cause.

The Circuit Court, correctly concluding that the facts adduced at the evidentiary hearing on defendant's Motion to quash and suppress (Motion, CLR 92; see facts, summarized, with R. references, at

pp. 6-11, supra), did not furnish probable cause, granted the Motion. (R. 75, App. D)

Based on the anonymous tip, "corroborated" only by the arrival at the Milshire Hotel of two men in a car matching the description given, the Appellate Court has determined that there was probable cause to arrest defendant, the passenger, after he entered and then exited the hotel. The Appellate Court held that the reputation of the hotel, "known as a place of drug sales and users," (App. 18; see also App. 3 & 21, and fn. 9, pp. 14-15, supra), coupled with the so-called "suspicious behavior" of the driver circling the block three times while defendant, the passenger, was in the hotel (App. 18, 21), added to the anonymous tip, equalled probable cause. (App. 17-18, 20-22)

Basically, and stripped of rhetoric, all the officer knew from the "tip" was

that the caller claimed to have overheard a conversation about a drug pickup from the Milshire Hotel; that two men in a described Datsun would be leaving from the Palm Gardens Lounge on Armitage and going to the Milshire Hotel at 2525 N. Milwaukee to make a large drug pickup. (See Facts, pp. 6-8, supra.) Of this, all that was corroborated was that two men in such a car arrived at the Milshire, and one went in while the other circled the block.

There is nothing in this to lead anyone to believe that the caller was privy to any reliable information about illegal activities of those in the car. As the Circuit Court cogently stated, finding no probable cause, "any mischief maker could give those innocent details [as those in the "tip"] merely by observing the defendant in the area in question." (R. 75; App. D, App. 26) Nothing was predicted by the tipster about the future

behavior of the persons in the car, indicative of any "inside information" by the tipster as to any illegal activity by those persons. Compare the instant case with Illinois v. Gates, 462 U.S. 213 (1983), and Alabama v. White, 496 U.S. ___, 110 L.Ed.2d 301 (1990).

Only the Appellate Court's reliance on the officer's testimony as to the reputation of the Milshire Hotel as a "place of drug sales and users,"¹⁰ (App. 18; see also App. 3 & 21, and fn. 9, pp. 14-15, supra), serves to distinguish the instant case from others wherein Illinois reviewing courts recently have deemed anonymous tips insufficient. See, e.g., People v. Adams, 131 Ill.2d 387, 654 N.E.2d 561 (1989); People v. Ross, 133

¹⁰ The officer's actual testimony was: "The Milshire Hotel has got itself a reputation for housing junkies, dope dealers, various different types of criminals in the hotel, you know." (R. 29)

Ill.App.3d 66, 478 N.E.2d 575 (2 Dist. 1985)--both, relying on Fourth Amendment principles, and finding no probable cause.

The Appellate Court also places undue significance on the driver's circling the block three times while defendant/passenger was in the hotel,¹¹ (App. 18, 21) using this factor (together with the hotel's "reputation") to elevate the "tip" to probable cause. (App. 17-18, 20-22)

Both the Circuit Court (R. 75; App. D, App. 26) and the Appellate Court (App. 9-10) correctly determined that the arrest took place when the car was pulled over by the police, and that probable cause is required for such action. See, e.g., Henry v. United States, 361 U.S. 98, 103

¹¹ Significantly, there is no evidence as to whether any parking spaces were available in the vicinity of the hotel; absent such testimony, what possible sinister connotation is justifiable from the car circling while the passenger was inside?

(1959):

"The prosecution conceded below, and adheres to the concession here, that the arrest took place when the ...[police] stopped the car. That is our view of the facts of this particular case. When the officers interrupted the two men [by stopping the car] and restricted their liberty of movement, the arrest, for purposes of this case, was complete. It is, therefore, necessary to determine whether at or before that time they [the officers] had reasonable cause to believe that a crime had been committed."

Moreover, of course, the fact that contraband was eventually discovered, cannot contribute to the probable cause determination, as the Circuit Court expressly found. (R. 75; App. D, App. 26-27) As this Court held in Henry, supra:

"The fact that afterwards contraband was discovered is not enough. An arrest is not justified by what the subsequent search discloses, as Johnson v. United States, 333 U.S. 10 ... holds." Henry, 361 U.S. at 103.

Clearly, what we are faced with here, was a full-blown arrest, for which probable

cause, and not merely reasonable suspicion, is necessary.

The Appellate Court's utilization of the combination of the building's reputation, plus the car's circling of the block, to elevate the tip to "probable cause," does violence to the Fourth Amendment.

While "totality of the circumstances," per Gates and White, both, supra, is the standard, that is not to say that individual ingredients may lawfully contribute to such "totality" if those individual ingredients are without legal relevance to the probable cause determination.

Absent evidence that there were parking places available that the driver chose not to use, the fact that the car circled the block three times, is functionally irrelevant, and certainly is not--as the Appellate Court found--

"suspicious." (See App. 18, 21.)

The "building reputation" evidence is worse than merely irrelevant; reliance on such evidence violates basic Fourth Amendment principles, that probable cause must inhere to the individual to be arrested, not merely to a place where he is found, or a person in whose company he happens to be. Such principles, epitomized in this Court's decision in Ybarra v. Illinois, 444 U.S. 85 (1979), prohibit the use of a building's "reputation" as an ingredient in the probable cause determination--for there is no rational reason for attributing the reputation of a given building, to any given person going there.¹² In Ybarra,

¹² Cf. People v. Boatman, 3 Ill. App.3d 652, 279 N.E.2d 425, 428 (1 Dist. 1972), where the Appellate Court approved the trial court's exclusion of evidence of the reputation of the prosecutrix' residence when offered in an attempt to attack their reputations.

this Court held:

"[P]robable cause particularized with respect to [the] person ... cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be." 444 U.S. at 91.

Moreover:

"It is true that the police possessed a warrant based on probable cause to search the tavern in which Ybarra happened to be at the time the warrant was executed. But, a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." Ibid.

At bar, of course, there was not (as in Ybarra) a warrant for the premises; but even where there is probable cause as to the premises (as in Ybarra), it does not "rub off" onto persons coming onto the premises.

Not only does the instant decision conflict with Fourth Amendment principles

as espoused by this Court in Ybarra, supra; it also conflicts with similar holdings from several federal Courts of Appeals, holding it is illegal to search all persons arriving at premises during a lawful search of the premises: to wit, United States v. Branch, 545 F.2d 177 (D.C. Cir. 1987), United States v. Miller, 546 F.2d 251 (8 Cir. 1976), and United States v. Clay, 640 F.2d 157 (8 Cir. 1981).

The connection of the person to the premises, is insufficient for probable cause, even if there is probable cause as to the premises (which, here, there was not); the character of premises does not carry over to persons arriving (or leaving) there.

Here, the "reputation" evidence is not even legally relevant, because a multi-unit hotel, rather than a single-unit premise, is involved; there is no

indication where in the hotel defendant went, or whether he met with anyone within, (R. 43-44); and the reputation testimony, going to the entire hotel, (see R. 29, quoted in fn. 10, p. 23, supra), is simply too general for the undue reliance which the Appellate Court has given it.

* * *

Certiorari should be allowed, because the Illinois reviewing court's unwarranted reliance on the reputation of the nature of the premises, as a factor in the probable cause determination, conflicts with (i) constitutional principles enunciated by this Court in Ybarra v. Illinois, supra, and with (ii) decisions from federal Courts of Appeals, such as Branch, Miller, and Clay, all, supra, that a person's connection to premises--even where there is probable cause as to the premises (as there is not, at bar)--is insufficient to furnish probable cause as

to the person. Coupled with the circumstance that the only facts from the mystery informer's anonymous tip that were corroborated, were wholly innocent, the reputation of the building (even considering also that the driver circled the block--not "suspicious" absent evidence there were any available parking places) did not elevate the tip to furnish probable cause.

The Circuit Court correctly applied constitutional principles in finding no probable cause and suppressing the evidence; and this Court should grant certiorari, and reverse the Appellate Court's reversal and reinstate the Circuit Court's judgment.

The Appellate Court's unjustifiable acceptance of the mystery informant's tip plus reputation of the premises plus circling the block as providing probable cause in this case--considering the

unsatisfactory nature of the supposedly "corroborative" information--portends a dangerous erosion of the constitutional concept of personal liberty as guaranteed by the Fourth and Fourteenth Amendments, inviolate except upon probable cause.

This Court should welcome the opportunity to scrutinize this alarming decision, and to speak on the disturbing questions presented by this Petition, for the guidance of courts which are duty-bound to enforce the Fourth Amendment.

CONCLUSION

For any or all of the foregoing reasons, Certiorari should be allowed.

And, on the merits, the Appellate Court's reversal of the trial court's order granting defendant's motion to quash and suppress should be reversed, and the trial court's order reinstated.

Respectfully submitted,

JULIUS LUCIUS ECHELES
CHARLES J. ZUGANELIS
Attorneys for Petitioner

A P P E N D I C E S

APPENDIX A

App. 1

SECOND DIVISION
DECEMBER 31, 1990

Notice

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

1-89-2249

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE) Appeal from the
STATE OF ILLINOIS,) Circuit Court of
Plaintiff-Appellant,) Cook County.
)
v.) No. 88 10301
)
FELICIANO NAVARRO,) Honorable
Defendant-Appellee.) Edward M. Fiala,
) Jr.,
) Judge Presiding.

O R D E R

Defendant Feliciano Navarro was charged by information with possession of a controlled substance with intent to deliver. (Ill.Rev.Stat. 1985, ch. 56-1/2, par. 1401(a)(2).) He filed a motion to quash his arrest and suppress evidence

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which was granted following a hearing in the circuit court of Cook County. The State has appealed from the order granting defendant's motion pursuant to Supreme Court Rule 604(a)(1). (107 Ill.2d R. 604 (a)(1).) The issue before us is whether there was probable cause to arrest defendant.

At the suppression hearing, defendant called Chicago police officer Dennis Palasz. Palasz was in the vicinity of 2525 North Milwaukee Avenue at approximately 11:30 p.m. on February 11, 1988 when he arrested defendant, who was a passenger in an automobile which was owned by the driver. Palasz testified that defendant did not commit any crime or traffic offense in his presence and that he had no warrant for the arrest of defendant.

The State also called Palasz as a witness. He explained that the Milshire

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Hotel is located at the Milwaukee address and that the hotel has a reputation for housing drug dealers and users. At approximately 11:15 p.m. on February 11, 1988, Palasz received a telephone call at the station from a Hispanic woman who would not give her name. The woman said that she overheard a conversation regarding a "large drug pick-up." She did not indicate where she overheard this information, but told Palasz that two men would be leaving the Palm Gardens Lounge on Armitage and going to the Milshire Hotel. The woman said that she walked outside when the men left and noted the color, make, and license plate number of their car. Palasz assumed that she had been in the Palm Gardens from this conversation.

Palasz testified that the woman described the car as a dark-colored Datsun. He could not recall the plate

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number she gave him but used his arrest report to refresh his memory. Palasz then stated that the plate number on the vehicle was LP 5747. The woman told him that the drugs would be picked up at the hotel. However, she did not state where the men were going. Palasz then set up surveillance in the 2700 block of Milwaukee Avenue.

At approximately 11:30 p.m. Palasz and other officers were about one block from the hotel, conducting surveillance with binoculars. At that time, a dark-colored, gray Datsun pulled up and stopped in the middle of the street. The vehicle came from the direction of the route Palasz described as the quickest from the Palm Gardens Lounge. The plate number on the Datsun was LP 5747 and two men were inside the car. The passenger got out and ran into the hotel. Palasz could see only what the man was wearing. The driver of

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the Datsun then moved the car southeast on Milwaukee Avenue to Sacramento, made a left turn, and continued to circle the block three times. After the third time around, the Datsun pulled over about five feet from the curb directly across the street from the hotel. He then saw the man who had exited the passenger seat about eight minutes earlier come out of the hotel, run, and jump into the Datsun.

The police activated their emergency lights, drove in front of the vehicle, and stopped it. Palasz got out, announced his office, and walked to the passenger side. Palasz observed two Hispanic men in the car. Through the windshield he saw the passenger, whom Palasz identified as defendant, trying to stuff a large brown bag between the console and the seat. Defendant and the driver were ordered out of the vehicle. Palasz reached into the car and recovered that bag which was

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protruding from the console-seat area. He opened it and found that it contained a large clear bag of white powder which Palasz believed, based upon his experience, was cocaine. Palasz then arrested defendant. When asked about the bag, defendant said that it was his. Defendant said that the driver, who owned the car, had no knowledge of what was going on. Defendant was also searched and contraband was found in his right pocket.

During cross-examination Palasz said that the anonymous caller gave him a license plate number for the vehicle and that two Hispanic men would make a "drug" pick-up. Palasz did not see defendant with anything in his hands when he left the hotel nor did he know if defendant saw anyone in the hotel or what he did inside. Palasz could not remember if the woman said that one of the men was wearing a gray jacket, but the defendant was wearing

a gray jacket. She did not give any information regarding the men's height, weight, age, or eye color. The woman had never given information to Palasz prior to the call. At the police station, defendant was again advised of his rights which he waived. Defendant consented to a search of his hotel room and contraband was found there. On redirect examination Palasz said that the anonymous call lasted about three minutes and he left almost immediately thereafter to go to the hotel area.

After arguments were heard regarding when the arrest actually occurred and whether there was probable cause, the trial court granted defendant's motion to quash his arrest. The court found that the tipster was presumed to be an ordinary citizen with inherent reliability. Summing up the information received and corroborated by the police, including that

the license plate number was the same as that given by the tipster, the court first concluded that there were sufficient articulable facts to justify a Terry stop of the vehicle. The court concluded, however, that there was no probable cause for an arrest, which the court said occurred when the vehicle was stopped. The court believed that the information provided and corroborated by police was merely of innocent details which did not amount to probable cause.

The State contends that there was sufficient independent corroboration of the anonymous informant's tip to provide probable cause to arrest defendant. However, the State does not indicate or argue when the arrest occurred. It does point to the trial court's remarks wherein the court found specific articulable facts to justify a Terry stop of the vehicle, but a lack of probable cause to arrest

defendant. The State claims that the trial court erred by applying a probable cause standard to a Terry stop.

While it is true that an officer may make a valid stop absent probable cause to arrest (People v. Houlihan (1988), 167 Ill.App.3d 638, 521 N.E.3d 277), the State has misconstrued the court's findings. The court correctly stated the standard to be applied for a Terry stop and then went on to conclude that while a Terry stop may have been justified, the stop of the vehicle was an arrest of its occupants. The assistant State's Attorney also stated that the arrest occurred when the car was stopped. Since the stop constituted an arrest, probable cause was necessary and the court determined that there was a lack of probable cause. It did not find that there was a lack of probable cause for a Terry stop.

The State does not take issue with

the court's determination that the arrest occurred when the vehicle was stopped, nor could it as it conceded to the trial court that the arrest took place at that point. (See People v. Adams (1989), 131 Ill.2d 387, 546 N.E.2d 561.) As previously stated, the State has avoided identifying when the arrest occurred, merely arguing that there was probable cause to "arrest" defendant. Therefore, we will address the issue based upon the finding of the trial court that the arrest took place at the time the vehicle was stopped.

In protecting against unreasonable searches and seizures, the inquiry is whether there is probable cause to believe that the person in question is involved in criminality based upon an evaluation of all the information available, including the source of the information. (People v. Adams (1989), 131 Ill.2d 387, 546 N.E.2d 561.) An officer may act upon information

provided by an informant, however, if the facts supplied are essential to a finding of probable cause. The tip must meet standards of reliability. (People v. Beck (1988), 167 Ill.App.3d 412, 521 N.E.2d 269). Under Illinois v. Gates, (1983), 462 U.S. 213, 76 L.Ed.2d 527, 103 S.Ct. 2317, the totality-of-circumstances test is applied to determine reliability, which permits the use of independent information to corroborate certain details of an informant's story and establish the necessary support for the informant's reliability. People v. Jones (1988), 169 Ill.App.3d 883, 524 N.E.2d 593.

The focus of the inquiry is not whether the events observed by the police are innocent or incriminating, but rather, whether the actions of the suspect, whatever their nature, give rise to an inference of reliability and credibility of the informant. (People v. Tisler

(1984), 103 Ill.2d 226, 251, 469 N.E.2d 147; People v. Ross (1984), 133 Ill.App.3d 66, 478 N.E.2d 575.) The trial court's finding on a motion to suppress will not be disturbed unless it is manifestly erroneous. Adams, 131 Ill.2d at 400.

In the case at bar, officer Palasz received an anonymous tip regarding a "drug pick-up." Defendant notes that the caller did not specify what type of substance was involved citing People v. Ross, (1985), 133 Ill.App.3d 66, 478 N.E.2d 575, wherein the court pointed out that there was no information indicating how the informant knew the substance was cocaine. However, as also stated by the Ross court, this deficiency would not necessarily render the informant's tip untrustworthy in the presence of strong corroborative circumstances established through independent police investigation. (Ross, 133 Ill.App.3d at 72.) Also,

defendant posits that not all "drugs" are scheduled controlled substances. The use of the colloquialism "drugs" in this context also does not render the informant's tip untrustworthy. The fact that a large amount of "drugs" were to be picked up at a hotel, a site of illicit drug activity, late at night, corroborates that scheduled controlled substances were involved and not legally obtainable substances.

The informant indicated that she overheard the conversation but did not state where or when the conversation took place. Her basis of knowledge and reliability were not sufficiently established, without further verification, to provide probable cause to believe a drug pick-up would take place. (Illinois v. Gates, 462 U.S. at 227; Adams, 131 Ill.2d at 400.) The informant did provide a description of the vehicle based upon

the claim that she followed the men to their car.

The woman said that two Hispanic men were leaving the Palm Gardens Lounge and going to the Milshire Hotel for a drug pick-up. This information provided the future actions of the suspects, which ordinarily, is not easily predicted.

(Illinois v. Gates, 42 U.S. at 245.)

Palasz observed two men drive up to the Milshire within a few minutes of the call. (See People v. Tisler (1984), 103 Ill.2d 226, 469 N.E.2d 147.) He could see the clothing of the man who got out of the car and apparently only learned they were Hispanic after the arrest. The fact that only one of the two men went into the hotel as pointed out by defendant does not detract from the corroboration of the informant's information. The men arrived from a direction consistent with the fastest route to the hotel from the Palm

Gardens Lounge. See Tisler, 103 Ill.2d at 249.

The informant told Palasz that the men were driving a dark-colored Datsun and gave him a license plate number. The State and defendant disagree, however, on whether the woman gave a license plate number which was verified by Palasz' observation. We have examined the record and find that the entire context of the officer's testimony demonstrates that she did provide a plate number which matched the vehicle in which defendant was a passenger.

Officer Palasz testified that the informant gave him a license plate number, but he could not recall it at the hearing. He said it was in his reports and used his report to refresh his memory. Then, he testified that the number on the vehicle was LP 5747. The report indicated that LP 5747 was the license number of the vehicle

defendant got in after leaving the hotel. Palasz later testified that he was able to determine the license plate number from this surveillance and that the number was the one he repeated from his report, LP 5747. The parties understood this testimony to mean that Palasz verified the plate number given to him with that of the vehicle which he observed. During closing arguments the State referred to the fact that Palasz corroborated the license plate number and defendant's attorney did not object to this statement, although he did correct another factual remark by the State. The trial court specifically found that the officer corroborated the license plate number he received from the informant. It was for the trier of fact to resolve the credibility of the witnesses, the weight accorded their testimony, and the inferences to be drawn therefrom. (People v. Jones (1988), 169

Ill.App.3d 883, 524 N.E.2d 593.) The record supports the court's finding.

Palasz saw the passenger of the Datsun, identified as defendant, run into the hotel for a few minutes and then run back to the car. While he did not see anything in defendant's hands, defendant was wearing a jacket.

Contrary to defendant's claim, there was an independent policy [sic.; should be, police] investigation to corroborate the details of the informant's tip. Almost every aspect of the tip was corroborated with the exception that Palasz did not verify that the men were Hispanic and he did not see anything in defendant's hands. While no names or detailed descriptions of the men were provided, the informant did give an accurate description of the car the men would be in, which was verified. In addition to the corroborated tip, Palasz

also knew that the Milshire Hotel was known as a place of drug sales and users. He also observed the suspicious behavior of the driver who circled the block three times while defendant was in the hotel. The driver did not park along the curb as defendant ran back to the car. This behavior added to the information provided by the anonymous caller in order to provide probable cause to arrest defendant.

In People v. Gailes (1984), 128 Ill.App.3d 339, 470 N.E.2d 1152, an anonymous person telephoned the police and stated that three or four black males left East St. Louis at 2 or 3 p.m. that day en route to Terre Haute, Indiana, to obtain 20-25 pounds of marijuana. He identified them as James Wilkerson, Calvin and "Buggy." The men were to arrive at the 2100 block of Kansas Street in East St. Louis between 11 p.m. and mid-night. The

car, owned by Wilkerson, was described as a very clean, black-over-blue 1976 Chevrolet Monte Carlo with two-inch whitewall tires and a CB whip antenna.

The police conducted surveillance of the 2100 block of Kansas Street about 11 p.m. and observed a Monte Carlo parked there that matched the description given. The police received another call about 12:45 a.m. from the informant stating that the men switched cars and were in a 1972 brown Pontiac Catalina. At about 1:25 a.m., a car matching that description stopped in front of 2136 Kansas Street. The police then ordered everyone out of the car with their hands up. Defendant was driving the car, and Anthony "Boogie" Nicholson, James Wilkerson, and a young black woman were passengers. Wilkerson was known to one of the officers as a marijuana dealer in the past. The woman's purse was searched and marijuana was

found. A consensual search of the trunk revealed 5-1/2 pounds of marijuana.

The appellate court determined that the corroborating facts, independently ascertained, were sufficient to establish probable cause. Each detail may not have been suspicious when viewed independently, but the cohesive whole supported a finding of probable cause. The court also noted that the informant's knowledge sprung from a familiarity with the plans of defendants which was further shown by the "update" of the information. Herein, the additional observations of officer Palasz and the independently corroborated facts of the informant's information supported a finding of probable cause.

Defendant claims that at most only a Terry stop was justified under Alabama v. White (1990), __ U.S. __, 110 L.Ed.2d 301, 110 S.Ct. 2412, which involved an anonymous tip. However, in addition to

verifying most of the details provided by the informant herein as was done in White, officer Palasz knew the reputation of the hotel where the drug pick-up was to occur. He also observed defendant run in and out of the hotel and the suspicious movement of the driver in circling the block three times. These factors were not present in White.

The additional factors just mentioned in the instant cases also distinguish it from People v. Adams (1989), 131 Ill.2d 387, 546 N.E.2d 561, cited by defendant. In Adams, defendant was observed driving a car described by an informant on Interstate 65 and then Interstate 80 into Will County. The fact that he was on Interstate 65 did not give rise to an inference that he was in Kentucky where defendant had possibly obtained cocaine. Other details given by the informant were not corroborated either.

Defendant relies upon People v. Ross, (1985), 133 Ill.App.3d 66, 478 N.E.2d 575. In Ross an anonymous informant had provided information to the police, but the police independently corroborated only two factors: that defendant's car was located at the Diplomat West and that a wedding reception was going on. This corroboration was insufficient to overcome the deficiencies of the anonymous informant's tip. Here, virtually every factor of the tip was verified and officer Palasz' information and observations gave probable cause to arrest defendant.

Finally, defendant asked that the State's appeal be dismissed for failure to file a certificate of impairment. However, the filing of the certificate is not jurisdictional. (People v. Kantowski (1983), 98 Ill.2d 75, 455 N.E.2d 1379.) The State is permitted to file a certificate of impairment within 14 days

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of the order of this court and if such certificate is not timely filed, this order will be vacated and the appeal dismissed. See People v. Carlton (1983), 98 Ill.2d 187, 455 N.E.2d 1385.

Based upon the foregoing, the order of the circuit court is reversed and the cause remanded for further proceedings upon the State's filing of a certificate of impairment within 14 days of this order.

Reversed and remanded.

DIVITO, P.J., with HARTMAN and
-SCRIANO, J.J., concurring.

APPENDIX B

App. 24

ORDER

IN THE APPELLATE COURT, STATE OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE)	
STATE OF ILLINOIS,)	
)	
Plaintiff-Appellee,)	
)	NO. 1-89-2249
v.)	
)	
FELICIANO NAVARRO,)	
)	
Defendant-Appellant.)	

ORDER

The mandate is recalled.

The appellant's petition for rehearing in the above-captioned case is hereby DENIED. The mandate is ordered to be reissued.

JUSTICE ANTHONY SCARIANO

JUSTICE ALLEN HARTMAN

JUSTICE GINO L. DIVITO

DATED: March 19, 1991

APPENDIX C

App. 25

Illinois Supreme Court
Juleann Hornyak, Clerk
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

June 5, 1991

Mr. Charles J. Zuganelis
Attorney at Law
35 E. Wacker Dr., S#3500
Chicago, Illinois 60601

No. 71643 - People State of Illinois,
respondent, v. Feliciano
Navarro, petitioner. Leave
to appeal, Appellate Court,
First District.

The Supreme Court today DENIED the
petition for leave to appeal in the above
entitled cause.

The mandate of this Court will issue
to the Appellate Court on June 27, 1991.

APPENDIX D

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[The Court] "... information that they received was highly suspicious. And as one Court had indicated, any mischief maker could give those innocent details merely by observing the defendant in the area in question.

Probable cause to arrest is justified by an objective standard, would a reasonable person given these circumstances and the information known to the officer conclude that a crime in fact had occurred and the defendant committed that particular crime?

I feel there was no probable cause to arrest the defendant. The arrest took place when the squad car stopped the vehicle. That was the seizure, and the arrest of the defendant took place at that time. That which was seized merely corroborated -- strike that -- would not be sufficient to corroborate the probable

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cause. When the officer opened the bag after the arrest, it would not be sufficient to justify the basis of the arrest.

I find no probable cause. I'm going to sustain your motion.

MR. ZUGANELIS: [Defense counsel]
Thanks so much, Judge."

(R. 75)

